

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rachel Ellman	Team: Squad #13	CCRB Case #: 201606030	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 06/15/2016 , Friday, 06/17/2016 5:30 AM	Location of Incident: 84th Precinct Stationhouse	Precinct: 88	18 Mo. SOL 12/17/2017	EO SOL 12/17/2017	
Date/Time CV Reported Wed, 07/13/2016 1:43 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 07/13/2016 1:43 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Leonard Clarke	27183	940013	084 PCT
2. Officers			
3. SDS David Cheesewright	01990	913752	INT CIS
4. CPT John Buttacavoli	00000	918799	088 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Nicholas Derobertis	295	922243	088 PCT
2. DT2 Lawrence Hotaling	02671	897695	084 PCT
3. POM Kitwane Lewis	17024	951915	088 PCT
4. POM Bobbie Crooks	21686	959572	088 PCT
5. SGT Scott Miller	3606	944125	088 PCT
6. SGT Florencio Arquer	01846	915250	INT OAS

Officer(s)	Allegation	Investigator Recommendation
A.CPT John Buttacavoli	Abuse: Capt. John Buttacavoli supervised the entry and search of § 87(2)(b).	
B.POM Leonard Clarke	Abuse: PO Leonard Clarke searched § 87(2)(b)'s cellphone.	
C.POM Leonard Clarke	Discourtesy: PO Leonard Clarke spoke discourteously to § 87(2)(b).	
D. Officers	Abuse: Officers searched the vehicle in which § 87(2)(b) was an occupant.	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

### Case Summary

§ 87(2)(b) filed this complaint to the CCRB on July 13, 2016 via the phone.

On June 17, 2016, at approximately 5:30 am, a search warrant was executed on § 87(2)(b)'s apartment at § 87(2)(b) in Brooklyn (**Allegation A**); the search was in pursuit of guns and narcotics. § 87(2)(b) and § 87(2)(b) a visitor of § 87(2)(b)s, were both handcuffed and transported to the 84<sup>th</sup> Precinct stationhouse. § 87(2)(b)s phone, wallet and keys were taken as evidence from § 87(2)(b)s apartment.

At the stationhouse, PO Leonard Clarke, of the 84<sup>th</sup> Precinct, questioned § 87(2)(b) about any knowledge she had of narcotics or firearms trade; this questioning was not in specific regards to § 87(2)(b). During this questioning, PO Clarke searched through § 87(2)(b)s phone (**Allegation B**), and directed profanities toward her (**Allegation C**). During a subsequent phone statement from § 87(2)(b) she redacted her claim that PO Clarke searched through her phone. After questioning, § 87(2)(b) was released and retrieved her property. When § 87(2)(b) returned to her vehicle, which was parked outside of § 87(2)(b)s apartment, she noticed that a door that she had previously locked was now unlocked, indicating that someone entered her car with keys (**Allegation D**). (Board Review 01)

§ 87(2)(b), § 87(2)(c), § 87(2)(f)

### Mediation, Civil and Criminal Histories

- § 87(2)(b)
- As of October 17, 2016, no claims have been filed in regards to this case.
- § 87(2)(b), § 87(2)(a) 160.50

### Civilian and Officer CCRB Histories

- This is § 87(2)(b)s and § 87(2)(b) first CCRB complaint. (Board Review 05, Board Review 06)
- PO Clarke has had 23 allegations against him in nine cases during his 10-year tenure with the NYPD. In 200717254, PO Clarke received Command Discipline B for a vehicle stop, search, and force. In 200808476, a second vehicle stop complaint was substantiated, for which the CCRB recommended charges; no disciplinary action was taken due to running of the statute of limitations. All but two of PO Clarke's cases, his first two, include a search and/or entry complaint, and PO Clarke has faced multiple allegations each of searches of person, of vehicles, and of residences. (Board Review 07)
- Sgt. Cheesewright has had 57 allegations in 25 cases during his 25-year tenure with the NYPD. Since 2006, six of Sgt. Cheesewright's seven cases concerned search warrant executions, including refusal to show the search warrant and threats of arrest and/or

notifying ACS made during searches. In 200600042, Sgt. Cheesewright's allegations of entry, property damage, and drawn gun were substantiated by the CCRB, yet Sgt. Cheesewright received no disciplinary action. Since then, Sgt. Cheesewright has been exonerated of three different entry allegations. (Board Review 08)

- Det. Hotaling has had nine allegations in six cases during his 26-year tenure with the NYPD. In 200601538 and 201404974, Det. Hotaling was exonerated of entry allegations. Det. Hotaling's lone substantiated complaint was for cursing in 1992. (Board Review 09)
- Capt. John Buttacavoli has had five allegations of misconduct in four cases during his 19-year tenure with the NYPD, none of which have been substantiated. In 201507939, Capt. Buttacavoli was exonerated in a search warrant case, and in 201311767 he was exonerated for a vehicle stop. (Board Review 14)

#### **Potential Issues**

- § 87(2)(b) s unsealed arrest documentation does not include any documentation regarding her processing at the stationhouse.
- Further, the investigation is without § 87(2)(b) testimony. § 87(2)(b) stated that she would coordinate § 87(2)(b) interview at the CCRB, yet was unable to provide a time to do so. The undersigned then took a phone statement with § 87(2)(b) who conveyed his reluctance to come to the CCRB for an interview. § 87(2)(b) was contacted on multiple occasions and numerous attempts were made to schedule § 87(2)(b) for an interview either at his home or a restaurant close to his home; § 87(2)(b) did not respond to any attempts by the undersigned to confirm these interviews. On October 11, 2016, a letter was sent to § 87(2)(b) address and a message was left with his most recently used phone number indicating that a response was needed for his allegations to be fully investigated. As of October 17, 2016, this letter has not been returned as undeliverable, and § 87(2)(b) has not contacted the CCRB.
- Last, § 87(2)(b) stated that he would not participate in the investigation due to his pending criminal charges.

#### **Findings and Recommendations**

##### **Allegations not pleaded**

- **Abuse of Authority: Entry and Search** is not pleaded because § 87(2)(b) the lone civilian witness for a possible entry and search of § 87(2)(b), did not provide a verified statement to the CCRB.

##### **Allegation A—Abuse of Authority: Capt. John Buttacavoli supervised the entry and search of § 87(2)(b):**

On June 17, 2016, at approximately 6 a.m., Capt. John Buttacavoli and officers from the 88<sup>th</sup> Precinct, 84<sup>th</sup> Precinct, Intel CIS and Brooklyn Transit entered and searched § 87(2)(b) s residence at § 87(2)(b).

Per search warrant § 87(2)(b), officers had a warrant to enter § 87(2)(b) and conduct a search.

§ 87(2)(b), § 87(2)(g)

**Allegation B—Abuse of Authority: PO Leonard Clarke searched § 87(2)(b)'s phone.**

**Allegation C—Discourtesy: PO Leonard Clarke spoke discourteously to § 87(2)(b)**

At the stationhouse, § 87(2)(b) stated that PO Clarke moved her from the holding pen to a room where he questioned her about her involvement with guns and drugs. PO Clarke told § 87(2)(b) that he would give her \$1,000 for every drug dealer she named. During this questioning, PO Clarke asked § 87(2)(b) for the passcode to unlock her phone, which had been taken from § 87(2)(b)'s apartment. § 87(2)(b) stated that PO Clarke never asked her for permission to look through her phone, and that a search of her phone was never discussed. § 87(2)(b) did not see PO Clarke on her phone, yet stated that, when returned to her, the phone was open to § 87(2)(b)'s photo album; she believes PO Clarke looked through her phone, yet noticed nothing else different about her phone. After questioning, PO Clarke removed § 87(2)(b) from the room and took her into the hallway. PO Clarke mentioned that he recognized § 87(2)(b) from South Carolina and told her, “I could have been a dick and kept you, but because of your condition [her dialysis], I’ll let you go.” § 87(2)(b) recalled another officer present, yet did not know his name. (Board Review 01)

§ 87(2)(b) provided a supplemental phone statement in which she redacted the allegation that PO Clarke searched through her phone. § 87(2)(b) stated that PO Clarke possessed her phone until she was released, but she did not see him using the phone during the course of questioning or elsewhere in her arrest processing. Further, she stated that at no point did she and PO Clarke discuss retrieving contacts from § 87(2)(b)'s phone, and, in contrast to her initial statement, that her phone had no passcode and was thus accessible to PO Clarke regardless of § 87(2)(b)'s cooperation. (Board Review 16)

PO Clarke did not dispute that he searched through § 87(2)(b)'s phone. PO Clarke stated that he offered § 87(2)(b) money for information about drug dealers during questioning. § 87(2)(b) told PO Clarke that she had contact information for drug dealers on her phone, and then handed the phone to PO Clarke while telling him the passcode, which PO Clarke believed indicated her consent to search. PO Clarke stated that he did not use § 87(2)(b)'s phone for any other reason than to find this contact information, and noted that the background image for § 87(2)(b)'s phone was a picture of guns. PO Clarke stated that he did not direct any profanities at § 87(2)(b) and that the two never discussed § 87(2)(b)'s dialysis. PO Clarke stated that he chose to void § 87(2)(b)'s arrest both because she cooperated and because § 87(2)(b) admitted that the recovered drugs were his; it is unclear if § 87(2)(b) claimed responsibility for the drugs prior to § 87(2)(b)'s questioning. (Board Review 10)

PO Clarke stated that Det. Hotaling was also present for § 87(2)(b)'s questioning, yet Det. Hotaling denied that he was present. Det. Hotaling stated that he was not involved in the processing or questioning of either § 87(2)(b) or § 87(2)(b) at the stationhouse, nor was he involved in the decision to release § 87(2)(b) (Board Review 12)

Per *People v. Gonzalez*, 39 N.Y.2d 122 (1976), “Whether consent is voluntarily given or is only a yielding to overbearing official pressure must be determined from the circumstances,” including but not limited to whether or not the individual is in custody, the age and legal knowledge of the individual who is dissenting, and the number of officers present. (Board Review 17)

Per *People v. Grajales*, 136 A.D.2d 564 (1988), when civilians consent to a search for an expressed investigative purpose, officers may not exceed the scope of this consent and search beyond what is relevant for their initial investigation. (Board Review 18)

§ 87(2)(b), § 87(2)(g)

**Allegation D—Abuse of Authority: Officers searched the vehicle in which § 87(2)(b) was an occupant.**

§ 87(2)(b) noted that her car and apartment keys were not among the items returned to her after her arrest was voided. After being released, § 87(2)(b) went to her vehicle, a red 2007 Ford Focus with South Carolina license plates, which was parked on § 87(2)(b)'s block. § 87(2)(b) noted that the driver's side door was left unlocked, and that items had shifted in her trunk, indicating that officers possibly entered her vehicle with the keys taken from § 87(2)(b)'s apartment. § 87(2)(b) stated that § 87(2)(b) had not driven her car prior to this incident. § 87(2)(b) did not herself witness any officers in or around her vehicle.

No officers interviewed recalled any investigative steps involving § 87(2)(b)'s car. PO Clarke, Sgt. Cheesewright and Det. Hotaling stated that they made no additional investigative steps after leaving § 87(2)(b) apartment, and that there had been no discussion at all of § 87(2)(b)'s car. (Board Review 11, Board Review 12)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g), § 87(4-b)

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Squad: 13

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date